

## § 648.64

Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

[73 FR 20131, Apr. 14, 2008, as amended at 77 FR 20741, Apr. 6, 2012]

### § 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACLs for the 2013 fishing year are specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations.

(b) *Georges Bank accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

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### GEORGES BANK YELLOWTAIL ACCOUNTABILITY MEASURE CLOSURE

Point	N. lat.	W. long.
GBYT AM 1 .....	41°50'	(1) (2)
GBYT AM 2 .....	40°30.75'	(3)
GBYT AM 3 .....	40°30'	66°40'
GBYT AM 4 .....	40°40'	66°40'
GBYT AM 5 .....	40°40'	66°50'
GBYT AM 6 .....	40°50'	66°50'
GBYT AM 7 .....	40°50'	67°00'
GBYT AM 8 .....	41°00'	67°00'
GBYT AM 9 .....	41°00'	67°20'
GBYT AM 10 .....	41°10'	67°20'
GBYT AM 11 .....	41°10'	67°40'
GBYT AM 12 .....	41°50'	67°40'
GBYT AM 1 .....	41°50'	66°51.94'

<sup>1</sup>The intersection of 41°50' N. lat. and the U.S.-Canada maritime boundary.

<sup>2</sup>From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

<sup>3</sup>The intersection of 41°30.75' N. lat. and the U.S.-Canada maritime boundary.

(2) *Duration of closure.* The Georges Bank yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less .....	October through November.
3.1–14 .....	September through November.
14.1–16 .....	September through January.
16.1–39 .....	August through January.
39.1–56 .....	July through January.
Greater than 56 .....	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less .....	September through November.
2.0–2.9 .....	August through January.
3.0–3.9 .....	March and August through February.
4.0–4.9 .....	March and July through February.
5.0–5.9 .....	March through May and July through February.
6.0 or greater .....	March through February.

(c) *Southern New England/Mid-Atlantic accountability measures—(1) Limited access scallop vessels.* (i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the

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scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(1)(ii) of this section. The Southern New England Yellowtail Accountability Measure Closure Area for Limited Access Scallop Vessels is comprised of Northeast Region Statistical Areas #537, #539 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LA SNEYT AM 1 .....	( <sup>1</sup> )	73°00'
LA SNEYT AM 2 .....	40°00'	73°00'
LA SNEYT AM 3 .....	40°00'	71°40'
LA SNEYT AM 4 .....	39°50'	71°40'
LA SNEYT AM 5 .....	39°50'	70°00'
LA SNEYT AM 6 .....	( <sup>2</sup> ) ( <sup>3</sup> )	70°00'
LA SNEYT AM 7 ( <sup>4</sup> ) .....	41°16.76'	70°13.47'
LA SNEYT AM 8 ( <sup>5</sup> ) .....	41°18.01'	70°15.47'
LA SNEYT AM 9 ( <sup>6</sup> ) .....	41°20.26'	70°18.30'
LA SNEYT AM 10 ( <sup>7</sup> ) .....	41°21.09' ( <sup>8</sup> )	70°27.03'
LA SNEYT AM 11 .....	41°20'	( <sup>9</sup> )
LA SNEYT AM 12 .....	41°20'	71°10'
LA SNEYT AM 13 .....	( <sup>10</sup> ) ( <sup>11</sup> )	71°10'
LA SNEYT AM 14 .....	( <sup>12</sup> )	71°40'
LA SNEYT AM 15 .....	41°00'	71°40'
LA SNEYT AM 16 .....	41°00' ( <sup>13</sup> )	( <sup>14</sup> )

<sup>1</sup> The south facing mainland coastline of Long Island.

<sup>2</sup> The southern coastline of Nantucket.

<sup>3</sup> From Point F to Point G along the southern coastline of Nantucket.

<sup>4</sup> Point G represents Esther Island, Nantucket, Massachusetts.

<sup>5</sup> Point H represents Tuckernuck Island, Nantucket, Massachusetts.

<sup>6</sup> Point I represents Muskeget Island, Nantucket, Massachusetts.

<sup>7</sup> Point J represents Wasque Point, Chappaquiddick Island, Massachusetts.

<sup>8</sup> From Point J to Point K along the southern coastline of Martha's Vineyard.

<sup>9</sup> The western coastline of Martha's Vineyard.

<sup>10</sup> The southern coastline of Rhode Island.

<sup>11</sup> From Point M to Point B following the mainland coastline of Rhode Island.

<sup>12</sup> The southern coastline of Rhode Island.

<sup>13</sup> From Point P back to Point A along the southern mainland coastline of Long Island.

<sup>14</sup> Southeast facing coastline of Long Island.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area for limited access vessels shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent coverage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent coverage of YTF sub-ACL	Length of closure
2 or less .....	March through April.
2.1–3 .....	March through April, and February.
3.1–7 .....	March through May, and February.
7.1–9 .....	March through May and January through February.
9.1–12 .....	March through May and December through February.
12.1–15 .....	March through June and December through February.
15.1–16 .....	March through June and November through February.
16.1–18 .....	March through July and November through February.
18.1–19 .....	March through August and October through February.
19.1 or more .....	March through February.

(2) *Limited access general category IFQ scallop vessels using dredges*—(i) Unless otherwise specified in §648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in paragraph (c)(2)(iii) of this section are met, the Southern New England Yellowtail Accountability Measure Closure Areas described in paragraphs (c)(2)(ii) through (iv) of this section shall be closed to scallop fishing by vessels issued an LAGC IFQ scallop permit and using dredges for the period of time specified in paragraph (c)(2)(v) of this section.

(ii) *Closure Area 1* is comprised of Northeast Region Statistical Area #537, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM1 A ....	41°20'	( <sup>1</sup> )
LAGC Dredge SNEYT AM1 B ....	41°20'	71°10'
LAGC Dredge SNEYT AM1 C ....	41°10'	71°10'
LAGC Dredge SNEYT AM1 D ....	41°10'	71°20'
LAGC Dredge SNEYT AM1 E ....	40°50'	71°20'
LAGC Dredge SNEYT AM1 F ....	40°50'	71°40'
LAGC Dredge SNEYT AM1 G ....	39°50'	71°40'
LAGC Dredge SNEYT AM1 H ....	39°50'	70°00'
LAGC Dredge SNEYT AM1 I .....	( <sup>2</sup> ) ( <sup>3</sup> )	70°00'
LAGC Dredge SNEYT AM1 J ( <sup>4</sup> ) .....	41°16.76'	70°13.47'
LAGC Dredge SNEYT AM1 K ( <sup>5</sup> ) .....	41°18.01'	70°15.47'
LAGC Dredge SNEYT AM1 L ( <sup>6</sup> ) .....	41°20.26'	70°18.30'
LAGC Dredge SNEYT AM1 M ( <sup>7</sup> ) .....	41°21.09' ( <sup>8</sup> )	70°27.03'

<sup>1</sup> The western coastline of Martha's Vineyard.

<sup>2</sup> The southern coastline of Nantucket.

<sup>3</sup> From Point I to Point J along the southern coastline of Nantucket.

<sup>4</sup> Point J represents Esther Island, Nantucket, Massachusetts.

<sup>5</sup> Point K represents Tuckernuck Island, Nantucket, Massachusetts.

<sup>6</sup> Point L represents Muskeget Island, Nantucket, Massachusetts.

<sup>7</sup> Point M represents Wasque Point, Chappaquiddick Island, Massachusetts.

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<sup>8</sup>From Point M back to Point A along the southern coastline of Martha's Vineyard.

(iii) *Closure Area 2* is comprised of Northeast Region Statistical Area #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM2 A .....	( <sup>1</sup> )	73°00'
LAGC Dredge SNEYT AM2 B .....	40°00'	73°00'
LAGC Dredge SNEYT AM2 C .....	40°00'	71°40'
LAGC Dredge SNEYT AM2 D .....	41°00'	71°40'
LAGC Dredge SNEYT AM2 E .....	41°00' ( <sup>2</sup> )	( <sup>3</sup> )

<sup>1</sup> The south facing mainland coastline of Long Island.  
<sup>2</sup> Southeast facing coastline of Long Island.  
<sup>3</sup> From Point E back to Point A along the southern mainland coastline of Long Island.

(iv) *Closure Area 3* is comprised of Northeast Region Statistical Area #539, and is defined by the following coordinates, connected in the order listed

Percent overage of YTF sub-ACL	AM closure area and duration		
	AM Closure Area 1	AM Closure Area 2	AM Closure Area 3
2 or less .....	Mar-Apr .....	Mar-Apr .....	Mar-Apr.
2.1-7 .....	Mar-May, Feb .....	Mar-May, Feb .....	Mar-May, Feb.
7.1-12 .....	Mar-May, Dec-Feb .....	Mar-May, Feb .....	Mar-May, Dec-Feb.
12.1-16 .....	Mar-Jun, Nov-Feb .....	Mar-May, Feb .....	Mar-Jun, Nov-Feb.
16.1 or greater .....	Mar-Jun, Nov-Feb .....	Mar-May, Feb .....	All year.

(vi) The Southern New England/Mid-Atlantic yellowtail flounder accountability measure for LAGC IFQ vessels using dredge gear shall only be triggered if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL is exceeded, an accountability measure is triggered for the limited access scallop fishery, and the catch of yellowtail flounder by LAGC IFQ vessels using dredge gear was estimated to be more than 3 percent of the total catch of yellowtail flounder in the scallop fishery. For example, in a given fishing year, if the total sub-ACL for the scallop fishery was 50 mt of yellowtail flounder and LAGC IFQ vessels using dredge gear caught an estimated 1 mt, accountability measures for IFQ vessels using dredges would not trigger because the fishery did not catch more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL (1.5 mt),

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by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM3 A .....	( <sup>1</sup> )	71°40'
LAGC Dredge SNEYT AM3 B .....	40°50' N	71°40'
LAGC Dredge SNEYT AM3 C .....	40°50' N	71°20'
LAGC Dredge SNEYT AM3 D .....	41°10' N	71°20'
LAGC Dredge SNEYT AM3 E .....	41°10' N	71°10'
LAGC Dredge SNEYT AM3 F .....	( <sup>1</sup> ) ( <sup>2</sup> )	71°10'

<sup>1</sup> The southern coastline of Rhode Island.  
<sup>2</sup> From Point F back to Point A following the southern mainland coastline of Rhode Island.

(v) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure areas for LAGC IFQ vessels using dredge gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

even if the total sub-ACL was exceeded. If LAGC IFQ vessels using dredge gear caught more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder, but the sub-ACL is not exceeded and the limited access accountability measure is not triggered, LAGC IFQ vessels using dredge gear would not trigger their own accountability measure.

(3) *Limited access general category IFQ scallop vessels using trawls*—(i) Unless otherwise specified in §648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in paragraph (c)(3)(iii) of this section are met, the area defined by the following coordinates shall be closed to LAGC vessels fishing with trawl for the period of time specified in paragraph (c)(3)(ii) of this section. Southern New England Yellowtail Accountability

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Measure Closure Area for Limited Access General Category IFQ Scallop Vessels using Trawl Gear is comprised of Northeast Region Statistical Areas #612 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Trawl SNEYT AM A	40°00'	( <sup>1</sup> )
LAGC Trawl SNEYT AM B	40°00'	71°40'
LAGC Trawl SNEYT AM C	41°00'	71°40'
LAGC Trawl SNEYT AM D	41°00' ( <sup>2</sup> )	( <sup>3</sup> )

<sup>1</sup> New Jersey mainland coastline.

<sup>2</sup> From Point D back to Point A along the southern mainland coastline of Long Island and New York, and the eastern coastline of New Jersey.

<sup>3</sup> Southeast facing coastline of Long Island, NY.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure area for LAGC IFQ vessels using trawl gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less .....	March through April.
2.1–3 .....	March through April, and February.
3.1–7 .....	March through May, and February.
7.1–9 .....	March through May and January through February.
9.1–12 .....	March through May and December through February.
12.1–15 .....	March through June and December through February.

(iii) The accountability measure for LAGC vessels using trawl gear shall be triggered under the following conditions:

(A) If the estimated catch of Southern New England/Mid-Atlantic yellowtail flounder by LAGC IFQ vessels using trawl gear is more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, the accountability measure for LAGC IFQ vessels using trawl gear shall be triggered, regardless of whether or not the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL was exceeded in a given fishing year. In this case, the accountability measure closure season shall be from March–June and again from December–February (a total of 7 months). For example, if the scallop

fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is 50 mt, LAGC IFQ vessels using trawl gear would trigger a 7-month closure, the most restrictive closure duration specified in paragraph (c)(3)(ii) of this section, if they caught 5 mt or more of yellowtail flounder.

(B) If the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is exceeded, resulting in an accountability measure for the limited access fleet as specified in paragraph (c)(1) of this section, LAGC IFQ vessels using trawl gear shall be subject to a seasonal closure accountability measure, as specified in paragraph (c)(3)(i) of this section, based on the total scallop fishery's sub-ACL overage, as specified in paragraph (c)(3)(ii) of this section.

(C) If both of these conditions are triggered, (*i.e.*, LAGC IFQ vessels using trawl gear catch more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL and the overall Southern New England/Mid-Atlantic yellowtail flounder sub-ACL is exceeded, triggering limited access scallop fishery accountability measures), the most restrictive accountability measure shall apply to LAGC IFQ vessels using trawl gear (*i.e.*, the closure season would be from March–June and again from December–February).

(iv) If the LAGC accountability measure for vessels using trawl gear is triggered, a vessel can switch to dredge gear to continue fishing in the LAGC trawl closure areas, as specified in paragraph (c)(3)(i) of this section, during the time of year when trawl gear is prohibited, as specified in paragraph (c)(3)(ii) of this section. If such a vessel does switch to dredge gear, it is subject to any yellowtail flounder accountability measures that may be in place for that gear type, as specified in paragraph (c)(3) of this section.

(d) [Reserved]

(e) *Process for implementing the AM—*

(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information

available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (e.g., when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded by scallop vessels following the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (e.g., an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch and overage information.

(f) [Reserved]

[76 FR 43770, July 21, 2011, as amended at 77 FR 20742, Apr. 6, 2012; 77 FR 26122, May 2, 2012; 78 FR 27108, May 9, 2013]

## Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

### § 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors.* The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guidelines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity.* The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60622, Sept. 29, 2011]